

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present

Mr. Justice Md. Iqbal Kabir

And

Mrs. Justice Jesmin Ara Begum

First Appeal No. 252 of 2015

IN THE MATTER OF:

Mosharef Hossen Howlader and others

... Plaintiff-Appellants

Versus

Kabir Hossain Howlader and others

... Defendant-Respondents

Mr. Tapash Kumar Biswas, Advocate

... For the Plaintiff-Appellants

Mr. Md. Iqbal Kabir, Advocate

...For the Defendant-Respondent Nos.

1 and 2

Judgment on: 01.12.2025

Jesmin Ara Begum, J:

At the instance of the plaintiff-appellants, this appeal is directed against the judgment and decree dated 24.05.2015 (decree signed on 27.05.2015) passed by the learned Joint District Judge, 2nd Court, Pirojpur in Title Suit No.08 of 2010.

The appellants as plaintiffs filed the Title Suit No.08 of 2010 for partition and for further declaration that two registered deeds dated 27.05.2004 and 27.09.2007 are null and void, inoperative, collusive and not binding upon the plaintiffs.

The case of the plaintiffs, in short, is that Hazi Shamsuddin Howlader was the owner of 4.91 acres of land under P.S. Khatian No.506, mouza khezurbaria, Touzi No.4642 corresponding to R.S. khatian No.366 and S.A. khatian No.252. Shamsuddin Howlader transferred this land to his 3rd wife Tokabjan Bibi, by a deed dated 20.09.1945 for a life interest. Shamsuddin Howlader's 1st wife Nurunnessa Khatun and 2nd wife Golbanu died during his lifetime. Shamsuddin Howlader died, leaving behind 1st wife's son Abdul Kader, 2nd wife's 2 sons Abdul Aziz Howlader and Abdur Rashid Howlader and 3rd wife, Tokabjan Bibi. Abdur Rashid Howlader died, leaving behind the plaintiff Nos.1-8

as his heirs. Defendants Nos 14-21 are the heirs of Abdul Aziz Howlader and defendant Nos. 1-13 are the heirs of Abdul Kader Howlader. Tokabjan Bibi died on 28th of September, 2007 leaving no issue and on her death, as per the deed dated 10.09.1945, the said property vested in the heirs of Shamsuddin Howlader, who are the plaintiffs and defendant Nos. 1-21. The plaintiffs as co-sharer by inheritance firstly filed the suit for partition claiming the 2nd scheduled land and then the contesting defendant Nos.1 and 2 by filing a written statement disclosed that Tokabjan Bibi transferred the whole 1st scheduled land to them by two deeds and then the plaintiffs amended their plaint and also prayed for a declaration that the deeds are null and void and not binding upon the plaintiffs.

The defendant Nos. 1-2 contested the suit by filing a written statement denying all the material allegations made in the plaint, contending *inter alia* that the original owner Shamsuddin Howlader settled his land to his wife Tokabjan Bibi by a registered Patta dated 10.09.1945 and R.S. khatian No.3366 was rightly prepared in her name. Thereafter, as owner of the suit land Tokabjan Bibi sold 1.32 acres of land by a registered kabala on 27.05.2004 to the defendant No.1 and his wife, Rehana Aktar. Then Tokabjan sold out 2.56 acres of land to defendant Nos.1 and 2 by another registered deed on 27.09.2007. By this way, the defendant Nos.1 and 2 became the owners of the suit land, where the plaintiffs have no right, title and interest. As such, the suit being false is liable to be dismissed with costs.

Defendants Nos 9-13 and defendant Nos.14-21 submitted two separate saham petitions with adequate Court fees by admitting the case of the plaintiffs. At the time of trial, the learned Joint District Judge framed as many as five issues as to maintainability, defect of parties, hotch potch, whether the plaintiffs have title and possession over the suit land and whether they are entitled to get any saham and whether the plaintiffs can get the relief as prayed for.

However, in the course of the trial plaintiffs examined 03(three) witnesses, whereas the defendants examined 05 (five) and both the contesting parties adduced documentary evidences to prove their respective cases.

Upon hearing the learned Joint District Judge, 2nd Court, Pirojpur dismissed the suit by the impugned judgment and decree dated 24.05.2015 (decree signed on 27.05.2015), on the findings that Shamsuddin Howlader settled the suit land to Tokabjan Bibi on 10.09.1945 by a registered deed of Patta and Tokabjan Bibi on acquiring title over the suit land by this patta deed

rightly transferred the land towards the defendant Nos.1 and 2 by the two registered deeds and thereafter, the plaintiffs have no right, title and possession in the suit land.

The plaintiffs, being aggrieved by and highly dissatisfied with the impugned judgment and decree dated 24.05.2015 (decree signed on 27.05.2015), passed by the learned Joint District Judge, Pirojpur, in Title Suit No.08 of 2010, preferred the instant First Appeal.

Mr. Taposh Kumar Biswas, the learned advocate appearing on behalf of the plaintiff-appellants, submits that the learned Court below dismissed the suit on misreading of the pleading, evidences and other materials on record and upon misconception of law and as such the impugned judgment and decree cannot be sustained in law.

He contends that the title claimed by the contesting defendants is founded on two deeds executed in 2004 and 2007. However, according to the recitals of those documents, one is a sale deed and the other is a *heba* (gift) deed, raising serious question as to how such transfers could validly originate from Tokabjan, who was merely a permissive possessor vide deed dated 10.09.1945 executed by the original owner, Shamsuddin Howlader. According to him conditional *patta* did not confer any ownership upon Tokabjan. Although the S.A. record was prepared in her name, the same was erroneously recorded. He brought notice to this court that the *patta* itself clearly stipulates: "আপনি জীবিত কাল থাকা পর্যন্ত উক্ত সম্পত্তি ভোগ করিতে পারিবেন। মরনান্তে উক্ত সম্পত্তি আমার খাসের হইবে। আপনার ওয়ারিশগণের কোন আপত্তি থাকিবেনা।" From the above, it appears that Tokabjan was only allowed to enjoy the property during her lifetime without acquiring any absolute title. Consequently, her successors could not have transferred valid title to the contesting defendants. He claims the predecessor of the contesting defendants did not acquire any lawful ownership in the suit land, and the court below, having failed to consider these material facts and legal aspects, passed the impugned judgment and decree erroneously, which is liable to be set aside.

The learned Advocate also submits that the Tokabjan Bibi's deed of 1945 is not a title deed and by this deed, no title over the suit land is created in favour of Tokabjan Bibi.

He further submits that by the deed dated 10.09.1945 Tokabjan Bibi only became a permissive possessor of the original owner Shamsuddin Howlader. However, he claims that Shamsuddin Howlader only transferred the possessory right of the suit land to his 3rd wife Tokabjan Bibi by the deed dated

10.09.1945 only for the lifetime of Tokabjan and after her death, the property of the deed will return to its original owner Shamsuddin Hawlader, or to his heirs.

According to him, the trial Court's conclusion is wholly misconceived, being based on a misinterpretation of the governing law and not supported by any reliable evidence on record. In the absence of proof of a valid settlement in accordance with statutory provisions, the *patta* cannot be treated as a document creating title. On such premises, it is contended that the dismissal of the suit solely based on the said erroneous finding is legally unsustainable. The impugned judgment was founded upon an incorrect appreciation of law and facts.

On the other hand, Mr. Md. Iqbal Kabir, the learned Advocate appearing for the respondent Nos.1 and 2 submits that Shamsuddin Hawlader settled 4.91 acres of land to his 3rd wife Tokabjan Bibi by registered patta deed dated 10.09.1945 and accordingly khatian was prepared in her name, thereafter Tokabjan Bibi sold this property by two registered kabala to defendant Nos.1 and 2 and by this way two defendants of the suit have become rightful owner and possessor of the whole property.

He also submits that with the acquisition of the rent-receiving interest by the Government through issuing a notification under section 3 of the State Acquisition and Tenancy Act, 1950, all intermediary interests disappeared and a person actually holding the land as "under raiyat" becomes a tenant under the Government.

The learned Advocate further contends that on receiving pattan of the land by a registered patta deed from Shamsuddin Hawlader, Tokabjan Bibi became reiyat under Shamsuddin Hawlader and she was paying rent to the Zamindar Shamsuddin Hawlader's sheresta and when the Government acquires all rent-receiving interest of the Zamindars, then Tokabjan Bibi became tenant under the Government and she became the exclusive owner of the suit land.

Mr. Iqbal Kabir, the learned Advocate, lastly submits that Tokabjan Bibi's deed dated 10.09.1945 clearly shows that by this registered deed of patta, Shamsuddin Hawlader made a pattan of the suit land towards Tokabjan Bibi.

We have heard the submissions advanced by the learned Advocates of both sides, examined all the materials on record and also gone through the

impugned judgment as well as the grounds taken in appeal and the grounds of the trial Court on which the title suit was dismissed by the trial Court.

Two important questions have arisen in this appeal, namely:

- 1) Whether the “Kole rayoti patta for life estate” deed of Tokabjan Bibi created any title over the suit land in favour of Tokabjan Bibi or whether the original owner, Shamsuddin Hawlader, made a pattan or settlement over the suit land by this deed to Tokabjan Bibi.
- 2) Whether the R.S and S.A. khatians were rightly prepared in the name of Tokabjan Bibi or whether the R.S. and S.A. khatians support the title of Tokabjan Bibi in the suit land.

In this respect, on perusal of the impugned judgment and decree, it appears that to decide the issues as to whether the plaintiffs have title and possession in the suit land and whether the plaintiffs are entitled to get a saham as prayed for, the learned trial Court took the negative decision with the following findings:

“নথি পর্যালোচনায় দেখা যায় যে, শামসুদ্দিন হাওলাদার নালিশা ভূমি তোকাবজান বিবি বরাবরে গত ১০/০৯/১৯৪৫ ইং তারিখে পাট্টা দলিল রেজিস্ট্রি করে দেয়। The State Acquisition and Tenancy Act, 1950 কার্যকর হওয়ার পর মধ্যস্বত্বভোগীদের অধিকার বিলুপ্ত হওয়ায় তোকাবজান বিবি আইনগতভাবে স্বত্ব অর্জন করেন। কারন তোকাবজান বিবিকে রেজিস্ট্রি পাট্টা দেয়া হয় যা পত্তনের সামিল মর্মে প্রতীয়মান হয়। তোকাবজান বিবির বরাবরে কটকবলা বা অসিয়ত করা হলে তা ওয়ারিশদের মধ্যে যাবার সুযোগ ছিল। তোকাবজান বিবির দখল অনুসারে আর এস রেকর্ড প্রস্তুত হয়। একইভাবে আর.এস. রেকর্ডের মতো সঠিকভাবেই তার নামে এস.এ. রেকর্ডও প্রস্তুত হয়। বাদীপক্ষের এস.এ ও আর.এস রেকর্ড ভ্রমাত্মকভাবে প্রস্তুত হওয়ার দাবী আইন সংগত নয়। The State Acquisition and Tenancy Act, 1950 পাশ হওয়ার পর শামসুদ্দিন হাওলাদারের মধ্যস্বত্বভোগী চরিত্র বিলুপ্ত হওয়ায় পাট্টা দলিলে উল্লেখিত মতে তোকাবজান বিবির মৃত্যুর পর শামসুদ্দিন হাওলাদারের উত্তরাধিকারীদের বরাবরে পাট্টা দলিলের সম্পত্তি ফেরত আসার সুযোগ ছিল না। কাজেই নালিশা জমিতে তোকাবজান বিবির স্বত্ব অর্জিত হওয়ায় তার হস্তান্তর বৈধ হচ্ছে।”

Mr. Taposh Kumar Biswas, the learned Advocate for the plaintiff-appellants, submits that the above-mentioned findings of the learned trial Court have no legal basis and the said patta is not a document for settlement.

He further submits that the deed of Tokabjan Bibi is a conditional patta deed and the averment of the deed makes it clear that only a possessory right was transferred for the lifetime of Tokabjan and after her death, the property will vest in the original owner.

He submits that the R.S. record reflects that the land was recorded in the name of the original owner, Shamsuddin Howlader, while Tokabjan was merely a possessor. It is further contended that the S.A. record was erroneously prepared in the name of Tokabjan, although such a record carries no presumption of title. The settled principle is that an S.A. record, by itself, does not confer or create title; consequently, any subsequent deed based on such erroneous record cannot pass valid title to the purchaser. Therefore, the impugned judgment and decree suffer from errors of law and are liable to be set aside, and the suit ought to have been decreed.

In this respect, in order to arrive at a just and legal decision, we have gone through the averments of the deed. The recital of the deed dated 10.09.1945 reads as follows:

“বিনা সেলামীতে জীবন স্বত্বের কোল রায়তি পাট্টা। কাস্য রায়তি অধীন বিনা সেলামীতে জীবন স্বত্বের কোল রায়তি পাট্টা। ---সম্যক জমির --- জীবন স্বত্বের কোল রায়তি পাট্টা প্রদান করিলাম।--- প্রকাশ থাকে যে, আপনি জীবিত কাল থাকা পর্যন্ত উক্ত সম্পত্তি ভোগ করিতে পারিবেন। মরনান্তে উক্ত সম্পত্তি আমার নামের হইবে, উক্ত সম্পত্তিতে আপনার ওয়ারীশগনের কোনও আপত্তি থাকিবে না।”

So, it is crystal clear from the averment of the deed dated 10.09.1945 that only the possessory right for the life time of Takabjan Bibi was transferred by Shamsuddin Howlader to his 3rd wife Tokabjan Bibi by this deed; as such the deed is not a settlement deed nor any legal title was transferred to Tokabjan Bibi by this deed, Tokabjan Bibi did not acquire any absolute title in the suit land by this “Kole Rioty Patta for life time deed.”

To determine the legal name and shape of the transaction that occurred by the deed of Tokabjan Bibi dated 10.09.1945. Mr. Taposh Kumar Biswas, the learned Advocate for the appellants, referred to the decision of our Apex Court in the case of Rabjel Mondal Vs. Didar Mondal and others reported in 47DLR(AD)41, where it was held that, “A gift of usufruct for life is permissible in Muslim Law as it stands today in the sub-continent.”

On perusal the above mentioned case it appears that the decision of two privy council cases were discussed in the case by our Appellate Division in para 11 of the judgment, where it was held that, “However, where the intention of the maker of the gift is to transfer the usufruct of the property then in that case a limited interest is created for a particular time and, therefore, conditions can be attached to it such as the reversion of the property to the donor after the expiry of the limited period.”

In the instant case, Shamsuddin Hawlader only transferred the possessory right of the property to Tokabjan Bibi for her lifetime only and as per the condition of the deed, after the death of Tokabjan Bibi, the property of the deed will return to its donor, Shamsuddin Hawlader. Based on the decision of our Apex Court, reported in 47 DLR (AD) 41, we can hold the view that the "Kole rioty patta for lifetime" deed of Tokabjan Bibi dated 10.09.1945 is a deed of gift of usufruct for life time of the donee only. No pattan, or rayati or under riyat or title was created by this patta deed; only a possessory right for life time was acquired by Tokabjan Bibi through this deed and that is why on the basis of her possession the suit land was recorded in her name in the khatian. Entry in the ROR does not support that Tokabjan Bibi had a title over the land in question. As no tenancy or riyat or under riyat was created in favour of Tokabjan by this patta deed of life time, the acquisition of rent-receiving interest by the Government also does not have any effect on the legal status of Tokabjan Bibi, who is only a donee of usufruct of the property for her lifetime. It is an established principle of law that entry of the name in the record of rights does not create any title, on that count, Tokabjan Bibi acquired no title over the suit land and no right to transfer the land in question. Therefore, transferring the suit land by two registered suit deeds towards defendant Nos. 1 and 2 by Tokabjan Bibi is a totally illegal transfer.

Regard being had to the above discussion, findings and facts and circumstances of the case, we are of the opinion that the submissions advanced by Mr. Taposh Kumar Biswas are just and acceptable in the eyes of the law.

Resultantly, the First Appeal is allowed without any order as to costs.

The impugned judgment and decree dated 24.05.2015 (decree signed on 27.05.2015) passed by the learned Joint District Judge, 2nd Court, Pirojpur in Title Suit No.08 of 2010 is hereby set aside and the original partition suit stands decreed in preliminary form and the plaintiff-appellants are entitled to get a shaham as prayed for in the suit property. Defendant-respondents are directed to make partition of the suit land amicably among themselves by metes and bounds and handover the share of the plaintiff-appellants to them within 60(sixty) days from the date, failing which the plaintiff-appellants will be entitled to get their shaham through the Court and to make the decree final as per law. Two registered suit deeds of defendant Nos. 1 and 2 are also declared null and void and not binding upon plaintiff-appellants.

The learned trial Court will be at liberty to dispose of the shaham petitions as per law.

Send down the LCR along with a copy of the judgment and order to the concerned Court at once.

Md. Iqbal Kabir, J:
I agree.

Md. Anamul Hoque Parvej
Bench Officer